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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,334	11/06/2003	Nick E. Ciavarella	GOJ 03029	7917

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EXAMINER

KEASEL, ERIC S

ART UNIT PAPER NUMBER

3753

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/702,334		CIAVARELLA, NICK E.	
	Examiner		Art Unit	
	Eric Keasel		3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on November 6, 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Non-Publication Request and Rescission of the Non-Publication Request

1. A review of the file history indicates that applicant filed a non-publication request with the filing of the application on November 6, 2003 certifying that the invention disclosed in this application has not and will not be the subject matter of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing of the application. MPEP 1122 states, in part:

“A nonpublication request is not appropriate unless the person who is signing the nonpublication request has made an actual inquiry consistent with the requirements of 37 CFR 10.18(b) to determine that:

(A) The application under 35 U.S.C. 111(a) has not been the subject of a foreign or international application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing (e.g., a counterpart PCT application); and

(B) The applicant's intent at the time the nonpublication request is being filed is that the application under 35 U.S.C. 111(a) will not be the subject of a foreign or international application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing.

Only when both conditions are satisfied, can applicants file a nonpublication request under 37 CFR 1.213(a)...A nonpublication request is also not appropriate if the applicant has not yet made a decision whether to file a counterpart application in a foreign country, or under a

multilateral international agreement, that requires publication of applications at eighteen months after filing. A certification under 37 CFR 1.213(a)(3) cannot be made based on a lack of knowledge of the applicant's plans concerning the filing of any counterpart application that would be subject to eighteen-month publication or the applicant's past practices or tendencies with respect to the filing of foreign counterpart applications...The applicant must have an affirmative intent not to file a counterpart application, and not just the absence of any intent or plan concerning the filing of any counterpart application that would be subject to eighteen-month publication. A nonpublication request is only appropriate if the applicant's intent at the time the nonpublication request is being filed is not to file a counterpart foreign or international application that would be subject to eighteen-month publication."

Applicant subsequently filed a PCT application claiming priority to the present application and timely filed a rescission of the non-publication request. So, the present application is not abandoned. However, applicants and their representatives should make sure that the certification is proper before signing and filing it with the Office. While applicants should and have rescinded the improper certification quickly, 35 U.S.C. 122(b)(2)(B)(i)-(iv) does not include any provision for "correction" of an improper certification. Any applicants or their representative, however, who makes a false statement (e.g., an improper certification) may be violating 37 CFR 10.18(b). While applicant cannot undo the fact that an improper certification was made in this application, with the filing of the rescission request applicant may explain that the original certification was improper.

Information Disclosure Statement

2. The information disclosure statement filed March 21, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language (i.e. BE 333, 215). It has been placed in the application file, but the non-compliant information referred to therein has not been considered. Applicant states in the response of June 5, 2006 that the Belgium reference was cited as part of the International Search report. However, applicant has failed to provide a copy of the International Search Report.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites "a keyed dispenser" in line 1 and also recites structure to accomplish the keying (i.e. the projections restricting movement) in the body of the claim. However, the last line of the claim recites "without a key". It is vague and indefinite what is meant by this claim because the recitations appear to require a key and also preclude a key.

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12, 16, and 17 (as understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis (US Patent Number 6,247,621).

Lewis discloses a container for a soap dispenser, the dispenser having a structure that defines a recess (see Fig. 4), the container comprising: a) a hollow body (see Fig. 2) adapted to fit within the recess (see Fig. 1); b) multiple projections for limiting movement of the body within the dispenser, said projections extending outwardly from said body toward the structure of the dispenser for selective engagement therewith; wherein said projections on the side extend laterally outward from said body; wherein said projections from the top extend longitudinally outward from said body; wherein said body includes a pair of projections extending outward from said body in opposite directions relative to each other; wherein said body has a longitudinal axis and a second projection, wherein said projections are symmetrically located on said body relative to the longitudinal axis; wherein said projections extend an equal distance from said body; wherein said projection has a laterally extending surface oriented perpendicular to a longitudinal axis of said body; wherein said projection has a surface extending perpendicular to a lateral axis of said body; wherein said projection has a surface extending parallel to a longitudinal axis of said body and a surface extending perpendicular to the longitudinal axis of said body, wherein said surfaces are adapted to engage the dispenser.

Lewis also discloses a container for soap comprising: a) a body having a top, a bottom, a front, a rear, and opposing sides connecting said top to said bottom and said front to said rear, said body having a longitudinal axis and a depth, wherein said body is made hollow to receive the soap; b) a pair of longitudinal projections extending outward from said body in a direction parallel to the longitudinal axis of said body; c) a pair of lateral projections extending laterally outward from said body; d) a pump (20) attached to said body and in fluid communication therewith for selectively discharging the soap from said body; and e) wherein said pairs of projections are symmetrically arranged on said body relative to the longitudinal axis; wherein said longitudinal projections extend from a top surface of said body; wherein said lateral projections extend from opposite sides of said body; and wherein said projections have a substantially cubed shape.

7. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassia (US Patent Number 4,673,109).

Cassia discloses a container (90) for a soap dispenser, the dispenser having a structure that defines a recess (between back wall 32 and retaining rails 36), the container comprising: a) a hollow body adapted to fit within the recess; b) projections (102) for limiting movement of the body within the dispenser, said projections extending outwardly from said body toward the structure of the dispenser for selective engagement therewith; wherein said projections extend laterally outward from said body; wherein said body includes a pair of projections extending outward from said body in opposite directions relative to each other; wherein said body has a longitudinal axis and a second projection; wherein said projections are symmetrically located on said body relative to the longitudinal axis; wherein said projections extend an equal distance

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from said body; wherein said projection has a laterally extending surface oriented perpendicular to a longitudinal axis of said body; wherein said projection has a surface extending perpendicular to a lateral axis of said body; and wherein said projection has a surface extending parallel to a longitudinal axis of said body and a surface extending perpendicular to the longitudinal axis of said body, wherein said surfaces are adapted to engage the dispenser.

8. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaanehe (US Patent Number 3,344,958).

Kaanehe discloses a container (22) for a soap dispenser, the dispenser having a structure that defines a recess (14), the container comprising: a) a hollow body adapted to fit within the recess; b) projections (26) for limiting movement of the body within the dispenser, said projections extending outwardly from said body toward the structure of the dispenser for selective engagement therewith; wherein said projections extend laterally outward from said body; wherein said body includes a pair of projections extending outward from said body in opposite directions relative to each other; wherein said body has a longitudinal axis and a second projection, wherein said projections are symmetrically located on said body relative to the longitudinal axis; wherein said projections extend an equal distance from said body; wherein said projection has a laterally extending surface oriented perpendicular to a longitudinal axis of said body; wherein said projection has a surface extending perpendicular to a lateral axis of said body; and wherein said projection has a surface extending parallel to a longitudinal axis of said body and a surface extending perpendicular to the longitudinal axis of said body, wherein said

surfaces are adapted to engage the dispenser.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-17 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassia ('109) in view of Perrin (US Patent Number 4,164,306).

Cassia discloses a container (90) for a soap dispenser, the dispenser having a structure that defines a recess (between back wall 32 and retaining rails 36), the container comprising: a) a hollow body adapted to fit within the recess; b) projections (102) for limiting movement of the body within the dispenser, said projections extending outwardly from said body toward the structure of the dispenser for selective engagement therewith; wherein said projections extend laterally outward from said body; wherein said body includes a pair of projections extending outward from said body in opposite directions relative to each other; wherein said body has a longitudinal axis and a second projection, wherein said projections are symmetrically located on said body relative to the longitudinal axis; wherein said projections extend an equal distance from said body; wherein said projection has a laterally extending surface oriented perpendicular to a longitudinal axis of said body; wherein said projection has a surface extending perpendicular to a lateral axis of said body; and wherein said projection has a surface extending parallel to a longitudinal axis of said body and a surface extending perpendicular to the longitudinal axis of

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said body, wherein said surfaces are adapted to engage the dispenser. Cassia further discloses a pump, but fails to disclose the two projections on the top surface of the soap container.

Perrin discloses a similar soap dispenser with two projections (64) extending from the top surface of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the two projections of Perrin with the device of Cassia in order to leave a gap (62) that allows for retaining structure associated with a hinged cover as taught by Perrin.

The recitation “about one-half of a depth of said body” is read broadly to include the projections of Perrin even though they appear to be less than one half (given that the broadly worded “about” has not been defined to any given range). Alternatively, the modified Cassia does not disclose the range of sizes of the projections. However, the size and shape of these projections are selected based on the desired contact area between the container and the dispenser structure (generally more contact area resulting in greater stability) and the desire to minimize unnecessary weight and cost (generally the lighter the device the less expensive it is). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the size and shape of the projections as set forth in claims 13-16, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (see MPEP 2144.05).

Response to Arguments

11. Applicant's arguments filed June 5, 2006 have been fully considered but they are not persuasive.

Applicant argues that when prior art devices have containers with projections that fit into recesses of a dispensing structure, it should be considered a keyed system; whereas, when applicant's container has projections that fit into recesses of a dispensing structure, it should not be considered a keyed system. The examiner disagrees. Furthermore, it is noted that only claim 17 recites this feature, so applicant's criticism of the prior art rejections of claims 1-16 regarding the perceived difference between "universal" and "keyed" systems is not persuasive.

Applicant argues that Lewis discloses recesses on the container and projections on the dispenser structure (and not the opposite). The examiner disagrees. Lewis discloses structure on both the container and dispensing structure that can be considered projections and recesses.

Applicant argues that Cassia does not disclose projections extending from the sides or top. The examiner disagrees with the first argument because Cassia clearly discloses projections (102) extending from the sides. The examiner agrees with the second argument. That is why Cassia is not used as an anticipatory reference for claims that recite the projections extending from the top.

Applicant argues that Kaanehe does not disclose the container having projections. The examiner disagrees. Note the projections (26) extending from the container.

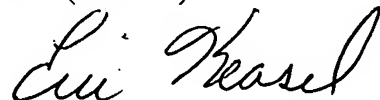
Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication should be directed to Eric Keasel at telephone number (571) 272-4929, who can normally be reached Monday-Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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